

PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

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Subpart A—Background and Policy

§ 800.1 Authorities, purposes, and participants.

(a) *Authorities.* Section 106 of the National Historic Preservation Act requires a Federal agency head with jurisdiction over a Federal, federally assisted, or federally licensed undertaking to take into account the effects of the agency's undertaking on properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Section 110(f) of the Act requires that Federal agency heads, to the maximum extent possible, undertake such planning

and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking and, prior to approval of such undertaking, afford the Council a reasonable opportunity to comment. These regulations define the process used by a Federal agency to meet these responsibilities, commonly called the section 106 process.

(b) *Purposes of the section 106 process.* The Council seeks through the section 106 process to accommodate historic preservation concerns with the needs of Federal undertakings. It is designed to identify potential conflicts between the two and to help resolve such conflicts in the public interest. The Council encourages this accommodation through consultation among the Agency Official, the State Historic Preservation Officer, and other interested persons during the early stages of planning. The Council regards the consultation process as an effective means for reconciling the interests of the consulting parties. Integration of the section 106 process into the normal administrative process used by agencies for project planning ensures early, systematic consideration of historic preservation issues. To this end, the Council encourages agencies to examine their administrative processes to see that they provide adequately for the efficient identification and consideration of historic properties, that they provide for participation by the State Historic Preservation Officer and others interested in historic preservation, that they provide for timely requests for Council comment, and that they promote cost-effective implementation of the section 106 process. When impediments are found to exist in the agency's administrative process, the agency is encouraged to consult with the Council to develop special section 106 procedures suited to the agency's needs.

(c) *Participants in the section 106 process—(1) Consulting parties.* Consulting parties are the primary participants in the section 106 process whose responsibilities are defined by these regulations. Consulting parties may include:

(i) *Agency Official.* The Agency Official with jurisdiction over an undertaking has legal responsibility for complying with section 106. It is the responsibility of the Agency Official to identify and evaluate affected historic properties, assess an undertaking's effect upon them, and afford the Council its comment opportunity. The Agency Official may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains responsible for section 106 compliance. The Agency Official should involve applicants for Federal assistance or approval in the section 106 process as appropriate in the manner set forth below.

(ii) *State Historic Preservation Officer.* The State Historic Preservation Officer coordinates State participation in the implementation of the National Historic Preservation Act and is a key participant in the section 106 process. The role of the State Historic Preservation Officer is to consult with and assist the Agency Official when identifying historic properties, assessing effects upon them, and considering alternatives to avoid or reduce those effects. The State Historic Preservation Officer reflects the interests of the State and its citizens in the preservation of their cultural heritage and helps the Agency Official identify those persons interested in an undertaking and its effects upon historic properties. When the State Historic Preservation Officer declines to participate or does not respond within 30 days to a written request for participation, the Agency Official shall consult with the Council, without the State Historic Preservation Officer, to complete the section 106 process. The State Historic Preservation Officer may assume primary responsibility for reviewing Federal undertakings in the State by agreement with the Council as prescribed in § 800.7 of these regulations.

(iii) *Council.* The Council is responsible for commenting to the Agency Official on an undertaking that affects historic properties. The official authorized to carry out the Council's responsibilities under each provision of the

regulations is set forth in a separate, internal delegation of authority.

(2) *Interested persons.* Interested persons are those organizations and individuals that are concerned with the effects of an undertaking on historic properties. Certain provisions in these regulations require that particular interested persons be invited to become consulting parties under certain circumstances. In addition, whenever the Agency Official, the State Historic Preservation Officer, and the Council, if participating, agree that active participation of an interested person will advance the objectives of section 106, they may invite that person to become a consulting party. Interested persons may include:

(i) *Local governments.* Local governments are encouraged to take an active role in the section 106 process when undertakings affect historic properties within their jurisdiction. When a local government has legal responsibility for section 106 compliance under programs such as the Community Development Block Grant Program, participation as a consulting party is required. When no such legal responsibility exists, the extent of local government participation is at the discretion of local government officials. If the State Historic Preservation Officer, the appropriate local government, and the Council agree, a local government whose historic preservation program has been certified pursuant to section 101(c)(1) of the Act may assume any of the duties that are given to the State Historic Preservation Officer by these regulations or that originate from agreements concluded under these regulations.

(ii) *Applicants for Federal assistance, permits, and licenses.* When the undertaking subject to review under section 106 is proposed by an applicant for Federal assistance or for a Federal permit or license, the applicant may choose to participate in the section 106 process in the manner prescribed in these regulations.

(iii) *Indian tribes.* The Agency Official, the State Historic Preservation Officer, and the Council should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties. When an

undertaking will affect Indian lands, the Agency Official shall invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement. When an Indian tribe has established formal procedures relating to historic preservation, the Agency Official, State Historic Preservation Officer, and Council shall, to the extent feasible, carry out responsibilities under these regulations consistent with such procedures. An Indian tribe may participate in activities under these regulations in lieu of the State Historic Preservation Officer with respect to undertakings affecting its lands, provided the Indian tribe so requests, the State Historic Preservation Officer concurs, and the Council finds that the Indian tribe's procedures meet the purposes of these regulations. When an undertaking may affect properties of historic value to an Indian tribe on non-Indian lands, the consulting parties shall afford such tribe the opportunity to participate as interested persons. Traditional cultural leaders and other Native Americans are considered to be interested persons with respect to undertakings that may affect historic properties of significance to such persons.

(iv) *The public.* The Council values the views of the public on historic preservation questions and encourages maximum public participation in the section 106 process. The Agency Official, in the manner described below, and the State Historic Preservation Officer should seek and consider the views of the public when taking steps to identify historic properties, evaluate effects, and develop alternatives. Public participation in the section 106 process may be fully coordinated with, and satisfied by, public participation programs carried out by Agency Officials under the authority of the National Environmental Policy Act and other pertinent statutes. Notice to the public under these statutes should adequately inform the public of preservation issues in order to elicit public views on such issues that can then be considered and resolved, when possible, in decisionmaking. Members of the public with interests in an undertaking and its effects on historic properties should be given reasonable opportunity

to have an active role in the section 106 process.

§ 800.2 Definitions.

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470–470w–6.

(b) *Agency Official* means the Federal agency head or a designee with authority over a specific undertaking, including any State or local government official who has been delegated legal responsibility for compliance with section 106 and section 110(f) in accordance with law.

(c) *Area of potential effects* means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

(d) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(e) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term *eligible for inclusion in the National Register* includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

(f) *Indian lands* means all lands under the jurisdiction or control of an Indian tribe.

(g) *Indian tribe* means the governing body of any Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1701, *et seq.*

(h) *Interested person* means those organizations and individuals that are concerned with the effects of an undertaking on historic properties.

(i) *Local government* means a city, county, parish, township, municipality,